6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[EPA-HQ-OAR-2003-0062; FRL- 9648-1]

RIN 2060-AR30

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$): Amendment to the Definition "Regulated NSR Pollutant" Concerning Condensable Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to revise the definition "regulated NSR pollutant" contained in two sets of Prevention of Significant Deterioration (PSD) regulations and in the EPA's Emission Offset Interpretative Ruling. This revision would correct an inadvertent error made in 2008 when the EPA issued its final rule to implement the new source review (NSR) program for fine particles with an aerodynamic diameter of less than or equal to 2.5 micrometers ($PM_{2.5}$). Effectively, this revision would reestablish the interpretation that for measurement of "particulate matter emissions" in the context of the PSD and NSR regulations there is no explicit requirement to include measurement of condensable PM. However, the condensable portion would continue to be required for emissions of particles with an aerodynamic diameter of less than or equal to 10 micrometers (PM_{10}) and $PM_{2.5}$.

DATES: Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Public Hearing. If anyone contacts the EPA requesting the opportunity to speak at a public hearing concerning the proposed regulation by **[INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the EPA will hold a public hearing approximately 30 days after publication in the Federal Register. Additional information about the hearing would be

published in a subsequent Federal Register notice.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR- 2003-0062, by one of the following methods:

- http://www.regulations.gov. Follow the online instructions for submitting comments.
- Email: a-and-r-docket@epa.gov.
- Mail: Air and Radiation Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Please include a total of two copies.
- Hand Delivery: EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to the applicable docket. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at http://www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or email. The www.regulations.gov website is an "anonymous access" system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through www.regulations.gov, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able

to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, D.C. 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1742, and the telephone number for the Air Docket is (202) 566-1744.

FOR FURTHER INFORMATION CONTACT: Mr. Dan deRoeck, Air Quality Policy Division (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number (919) 541-5593; fax number (919) 541-5509; or email address: deroeck.dan@epa.gov.

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0641; fax number (919) 541-5509; email address: long.pam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities affected by this rule include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups that emit particulate matter:

Industry group	NAICS[a]

Electric services	221111, 221112, 221113, 221119, 221121, 221122
Petroleum refining	32411
Industrial inorganic chemicals	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188
Industrial organic chemicals	32511, 325132, 325192, 325188, 325193, 32512, 325199
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551
Natural gas liquids	211112
Natural gas transport	48621, 22121
Pulp and paper mills	32211, 322121, 322122, 32213
Paper mills	322121, 322122
Automobile manufacturing	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213
Pharmaceuticals	325411, 325412, 325413, 325414

[a] North American Industry Classification System.

Entities affected by this rule also include state, local, and tribal reviewing authorities responsible for implementing Clean Air Act (CAA or Act) stationary source permitting programs.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit information containing CBI to the EPA through www.regulations.gov or email. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention: Docket ID EPA-HQ-OAR-2003-0062. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted

for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments. When submitting your comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this proposed rule will be posted in the regulations and standards section of our NSR home page located at http://www.epa.gov/nsr.

D. How can I find information about a possible public hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0641; fax number (919) 541-5509; email address: long.pam@epa.gov.

E. How is this preamble organized?

The information in this Supplementary Information section of this preamble is organized as follows:

II. Purpose

The purpose of this rulemaking is to revise the definition “regulated NSR pollutant” contained in the regulations for PSD at 40 CFR 51.166 and 52.21, and in the EPA’s Emission Offset Interpretative

Ruling at 40 CFR part 51 Appendix S. This revision will correct an error that occurred when the regulations were revised in 2008. The existing definition was changed in 2008 to require that particulate matter emissions, PM_{10} emissions and $PM_{2.5}$ emissions—representing three separate size ranges or indicators of particles—must include "gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures," i.e., condensable particulate matter. See existing 40 CFR 51.166 (b)(49)(vi) and 52.21(b)(50)(vi). Previously, EPA's regulations did not require particulate matter emissions to include condensable particulate matter; consistent with the applicable New Source Performance Standards (NSPS) for PM and the corresponding compliance test method, only the filterable fraction had been considered for NSR purposes. The 2008 change therefore imposed an unintended new requirement on state and local agencies and the regulated community. As described in more detail in section IV of this preamble, in the 2008 final rule we did not intend that the term "particulate matter emissions" include the condensable PM fraction of primary PM; the EPA no longer regulates the ambient indicator, total suspended particulate (TSP), with which the indicator "particulate matter emissions" was originally associated, and there is no compelling reason for requiring that the condensable PM portion be counted toward the measure of "particulate matter emissions" from stationary sources for PSD applicability determinations and in establishing emissions limitations.

If these proposed revisions are finalized, they will ensure that our approach for regulating the three indicators for particulate matter under the PSD program is codified as originally intended. This would mean that "PM_{10} emissions" and "$PM_{2.5}$ emissions" would be regulated as criteria pollutants (that is, under the portion of the definition that refers to "[a]ny pollutant for which a national ambient air quality standard has been promulgated…"), and would be required to include the condensable PM fraction emitted by a source. Also, "particulate matter emissions" would be regulated as a non-criteria pollutant (that is, under the portion of the definition that refers to "[a]ny pollutant that is subject to any

standard promulgated under section 111 of the Act"), without a general requirement to include the condensable PM fraction emitted by a source.

III. Background

A. National Ambient Air Quality Standards (NAAQS) for Particulate Matter (PM)

Sections 108 and 109 of the CAA govern the establishment and revision of the NAAQS. Section 108 directs the Administrator to identify and list "air pollutants" that "in his judgment, may reasonably be anticipated to endanger public health and welfare" and whose "presence *** in the ambient air results from numerous or diverse mobile or stationary sources" and to issue air quality criteria for those pollutants that are listed. Section 109 directs the Administrator to propose and promulgate primary and secondary NAAQS for pollutants listed under section 108 to protect public health and welfare, respectively. Section 109 also requires review of the NAAQS at 5-year intervals.

"Particulate matter" is a term used to define an air pollutant that consists of a mixture of solid particles and liquid droplets found in the ambient air. Particulate matter occurs in many sizes and shapes and can be made up of hundreds of different chemicals. As explained further in the discussion that follows, the EPA has regulated several size ranges of particles, e.g., $PM_{2.5}$, referred to as indicators of particles[1], which has required that test methods be developed to capture the appropriate size particles that occur in the ambient air or that are being emitted directly from a source. In some cases, the EPA regulates certain species of particles as separate "air pollutants." For example, lead, beryllium, fluorides, and sulfuric acid mist are constituents of particulate matter that are also regulated separately under New Source Performance Standards (40 CFR part 60) or National Emissions Standards for Hazardous Air Pollutants (40 CFR parts 61, 63 or 65).

[1] The "indicator" of a standard defines the chemical species or mixture that is to be measured in determining whether an area (in the case of an ambient standard) or a source (in the case of an in-stack standard) attains that standard.

Particles as measured in the ambient air consist of both primary and secondary particles. Primary particles are emitted directly from sources, and may include gaseous emissions, which, when emitted from the stack of a source, condense under ambient conditions to form particles. Primary particles directly emitted by a source as a solid or liquid at the stack and captured on the filter of a test train are referred to as the "filterable" PM fraction. The gaseous emissions that form particles upon condensing under ambient conditions following release from the stack are referred to as "condensable" PM. Other types of particles, known as secondary particles, are formed from precursors of PM, e.g., SO_2 and NO_x, at a distance from their point of release as a result of complex reactions in the atmosphere.

Initially, the EPA established NAAQS for PM on April 30, 1971, under sections 108 and 109 of the Act. See 36 FR 8186. Compliance with the original PM NAAQS was based on the measurement of particles in the ambient air using an indicator of particles measuring up to a nominal size of 25 to 45 micrometers (μm) in the ambient air. The EPA used the indicator name "total suspended particulate" or "TSP" to define the particle size range that was being measured. Total suspended particulate remained the indicator for the PM NAAQS until 1987 when the EPA revised the NAAQS in part by replacing the TSP indicator for both the primary and secondary standards with a new indicator that includes only those particles with an aerodynamic diameter smaller than or equal to a nominal 10 μm (PM_{10}).

On July 18, 1997, the EPA made significant revisions to the PM NAAQS in several respects. While the EPA determined that the PM NAAQS should continue to focus on particles less than or equal to 10 μm in diameter, the EPA also determined that the fine and coarse fractions of PM_{10} should be considered separately. Accordingly, on July 18, 1997, the EPA added a new indicator for fine particles with a nominal mean aerodynamic diameter less than or equal to 2.5 μm ($PM_{2.5}$), and continued to use PM_{10} as the indicator for purposes of regulating the coarse fraction of PM_{10}. See 62 FR 38652.

In the next periodic review, the EPA concluded, on October 17, 2006, that it was necessary to revise the primary and secondary NAAQS for PM to provide increased protection of public health and

welfare. See 71FR 61144. The EPA retained the two separate indicators—PM_{10} and $PM_{2.5}$—for determining compliance with the revised standards for PM, so both continue to be regarded as criteria pollutants.

B. Measuring and Reporting Emissions of Particulate Matter (PM)

Section 110 of the Act requires that state and local air pollution control agencies develop and submit plans, known as state implementation plans or SIPs, for the EPA approval that provide for the attainment, maintenance and enforcement of the NAAQS. An essential component of each SIP is the emissions reduction strategy, including emissions limitations and other control measures (as set forth in SIPs and in individual source permits) designed to control the emissions of pollutants that contribute to the air quality against which the NAAQS are measured. For many years, most control measures for PM were generally focused on primary PM—specifically, the filterable PM fraction. Accordingly, the early EPA test methods for quantifying amounts of PM emitted by sources generally were based on the collection of the filterable PM fraction.

In support of state obligations to develop emissions reduction strategies, section 111 of the Act requires the EPA to adopt technology-based standards of performance that focus on sources that cause or contribute significantly to "air pollution which may reasonably be anticipated to endanger public health and welfare." Such standards, referred to as NSPS, are emissions standards that are intended to reflect the degree of air pollution emission limitation attainable through the application of the best system of emission reduction (taking into account the cost of achieving such reduction and any non-air quality health and energy requirements) that the Administrator determines has been adequately demonstrated. Accordingly, the EPA historically has developed NSPS (and corresponding compliance test methods) under 40 CFR part 60 to provide emissions standards that address, among other pollutants, the control of PM.

When the EPA promulgated the first set of NSPS for PM in 1971, only the filterable PM fraction was regulated. The EPA simultaneously promulgated a test method, known as Method 5, as the NSPS compliance test method for PM. Once available, Method 5 was often also used for permitting purposes to quantify the in-stack PM emissions that represented the particles in the atmosphere expressed in terms of the ambient indicator, TSP—the original indicator for the PM NAAQS. Thus, the filterable PM emissions collected by Method 5 or other similar source test methods were sometimes referred to as "TSP emissions," even though it was recognized that Method 5 actually collected particles that exceeded the TSP size range (25-45 μm), and did not include the condensable PM fraction. Today, Method 5 continues to serve as the performance testing procedure for most NSPS for PM.

With the promulgation of the PM_{10} NAAQS in 1987, the annual source emissions reporting of "particulate matter emissions" (required under 40 CFR 51.322 and 51.323) ended with the state reporting of calendar year 1987 emissions, and the required reporting of PM_{10} emissions began with state reporting of calendar year 1988 emissions. In the absence of a standard reference test method, states were instructed to choose an appropriate method of determining PM_{10} emissions for each source. On April 17, 1990, the EPA promulgated Method 201A to provide the states with a standard means of measuring filterable PM_{10} emissions contained in the stack. Later in the same year, noting that condensable PM emissions form very fine particles in the PM_{10} size range and are considered PM_{10} emissions, the EPA proposed to add a test method to provide states with a means of measuring condensable PM emissions from stationary sources. See 55 FR 41546, October 12, 1990. The test method for condensable PM emissions, known as Method 202, was promulgated on December 17, 1991, in Appendix M of 40 CFR part 51. With the new focus on the PM_{10} indicator, the EPA also began to emphasize the relevance of condensable PM emissions,[2] and encouraged states to consider the condensable PM fraction where it was considered to be a significant contributor to an area's PM_{10}

[2] "Condensable particulate matter is of potential importance because it usually is quite fine and thus falls primarily within the PM_{10} fraction." See, "PM-10 SIP Development Guideline" (June 1987) at p. 5-32.

nonattainment status. However, there were only a few nonattainment areas where control of the condensable PM portion was actually required in order to achieve attainment.

Even before the EPA's introduction of the $PM_{2.5}$ indicator for the PM NAAQS in 1997, the EPA published information on $PM_{2.5}$ emissions in its National Emission Inventory Database (NEI).[3] With the assistance of information gained through speciation analyses of $PM_{2.5}$, the EPA recognized that condensable PM could be a substantial portion of the total $PM_{2.5}$ emitted by certain source categories. Beginning with the 1999 NEI, the EPA began including the condensable PM fraction of the total $PM_{2.5}$ emitted by certain source categories, and encouraged states to consider the condensable PM fraction for the development of emissions inventories for $PM_{2.5}$ SIPs.[4] The EPA also provided condensable PM emission factors for various sources in AP-42 so that those state and local air control agencies having the responsibility to report emission inventories would have the tools needed to estimate and report those emissions to the EPA.

In 2002, the EPA issued a rule known as the Consolidated Emissions Reporting Rule (CERR), which, among other things, established requirements for the reporting to the EPA of $PM_{2.5}$ emissions. In conjunction with the new reporting requirements, the EPA added definitions of "primary PM," "primary PM_{10}," and "primary $PM_{2.5}$," all of which included both the filterable and condensable PM fraction. See 67 FR 39602, June 10, 2002. The CERR required states to report emissions of primary PM_{10} and primary $PM_{2.5}$, and listed as optional the reporting of emissions of primary PM. However, when the EPA amended those rules in 2008, it dropped the definition "primary PM" and the listing of "primary PM" as an optional pollutant, eliminating the requirement for reporting "PM" (as opposed to PM_{10} and $PM_{2.5}$). See 73 FR 76539, December 17, 2008.

[3] The EPA's NEI contains information about sources that emit criteria pollutants and their precursors, and hazardous pollutants. The database includes estimates of annual air pollutant emissions from point, nonpoint and mobile sources. The NEI currently contains information on PM with regard to the criteria indicators PM_{10} and $PM_{2.5}$.

[4] "Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze," EPA-454/R-99-006 (April 1999).

In November 2005, the EPA proposed requirements that states must fulfill in developing their implementation plans for the attainment of $PM_{2.5}$ NAAQS. See 70 FR 65984, November 1, 2005. With the historical emphasis on controlling the filterable PM fraction—even when the shift occurred to control PM_{10} emissions—it became apparent that in many cases it could be necessary to take a closer look at the control of the condensable PM fraction in order to attain the $PM_{2.5}$ NAAQS in some areas.[5] The preamble highlighted the importance in certain cases of controlling the condensable PM fraction to help ensure the attainment of the new NAAQS. It was acknowledged at that time that most stationary source test methods specified in state rules did not provide for the measurement of condensable PM emissions. Instead, it was found that most source test methods referenced in SIPs provided a measurement of only the filterable fraction of PM. The EPA further noted that "these filterable particulate matter test methods are either identical or very similar to one of the ten Federal test methods published in Appendix A of 40 CFR Part 60 and used to determine compliance with New Source Performance Standards (NSPS)." Id at 66049. The EPA indicated that states needing to adopt local control measures for primary $PM_{2.5}$ in nonattainment areas would need to revise their stationary source test methods to focus on the $PM_{2.5}$ indicator, including the condensable PM fraction.[6]

On March 25, 2009, the EPA proposed to modify existing Method 201A to allow for measurement of filterable $PM_{2.5}$. In fact, the proposed modification offered the ability to measure filterable PM_{10}, filterable $PM_{2.5}$, or both filterable PM_{10} and filterable $PM_{2.5}$ from stationary sources. At the same time, the EPA proposed amendments to Method 202 to improve the precision of the method for measuring condensable PM and to provide for more accurate overall quantification of primary emissions

[5] "The inclusion of condensable emissions in a source's $PM_{2.5}$ emissions is of increasing importance with the change in the indicator for particulate matter to $PM_{2.5}$. Condensible emissions are essentially fine particles, and thus are a larger fraction of $PM_{2.5}$ than of TSP or PM_{10}." 70 FR 65984 (November 1, 2005) at p. 66039.

[6] The EPA did indicate that "test methodologies that measure only filterable particulate matter would be acceptable in areas where no additional reductions of primary $PM_{2.5}$ and particulate precursor emissions are required to project attainment of the $PM_{2.5}$ NAAQS." Id at 66049.

of PM_{10} and $PM_{2.5}$ to the ambient air. Method 202 contained several optional procedures that were intended to accommodate the various test methods used by state and local regulatory entities at the time Method 202 was being developed. The inclusion of the optional procedures in 1991 ultimately proved problematic in that each of them resulted in a different emissions value. To address this issue, the EPA explored the influence of the optional procedures to identify the ones that would result in a biased measurement. In December 2010, the EPA promulgated an improved Method 202 eliminating options that would produce different measures of emissions.

C. New Source Review Program for PM

The NSR program is a statutorily based preconstruction permitting program that applies when a stationary source of air pollution proposes to construct or undergo modification. The NSR program consists of three different preconstruction permit programs: (1) PSD; (2) nonattainment NSR; and (3) minor NSR. We often refer to the PSD and nonattainment NSR programs together as the major NSR program because those permit programs regulate the construction of new major stationary sources and major modifications to existing major stationary sources.

The nonattainment NSR program applies in advance of construction to new major stationary sources and major modifications of sources of a pollutant that locate in an area that is designated "nonattainment" for that pollutant. As such, the nonattainment NSR program applies only with respect to criteria pollutants, i.e., pollutants (or indicators thereof) for which EPA has promulgated NAAQS. On the other hand, the PSD program is a statutorily based preconstruction review and permitting program that applies to new or modified major stationary sources proposing to locate in an area meeting the NAAQS ("attainment" areas) and areas for which there is insufficient information to classify them as either attainment or nonattainment ("unclassifiable" areas).

Like the nonattainment NSR program, the applicability of the PSD program to a major stationary source or major modification must be determined in advance of construction and is pollutant-specific.

However, unlike the nonattainment NSR program, the PSD requirements are applied on a pollutant-specific basis for any "air pollutant" that is "subject to regulation" under the Act. Thus, the PSD program is not restricted to criteria pollutants.[7] Once a major source is determined to be subject to the PSD program (PSD source) for a particular air pollutant, among other requirements, it must undertake a series of analyses to demonstrate that it will use the best available control technology (BACT) to minimize the emissions of each affected pollutant, and that the emissions of each pollutant will not cause or contribute to a violation of any applicable NAAQS or any applicable maximum allowable increase in a pollutant concentration (PSD increment).

Consistent with the original NAAQS and PSD increments for PM, the PSD program established pollutant applicability requirements for PM on the basis of the TSP indicator. Accordingly, the PSD regulations defined a "significant" increase in emissions of PM as 25 tons per year (tpy). When the EPA revised the PM NAAQS in 1987, establishing a new PM_{10} indicator, two indicators for particles were recognized as being regulated under the Act because the statutory PSD increments for PM were still expressed in terms of TSP. The addition of the new PM_{10} indicator also necessitated a distinction between those emissions of PM that should be used to determine a source's compliance with the new PM_{10} NAAQS and those emissions of PM that should be used to determine a source's compliance with the existing TSP-based increments. Hence, in 1987, the EPA adopted the term "particulate matter emissions" to help clarify the distinction between the original TSP indicator for the NAAQS and the new PM_{10} indicator. See 52 FR 24672, July 1, 1987. Accordingly, the original significant emissions rate of 25 tpy was retained and applied to the newly-defined term "particulate matter emissions" (associated with the ambient TSP indicator), and simultaneously a significant emissions rate of 15 tpy was defined in association with the term "PM_{10} emissions." See 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i).

[7] "Particulate matter emissions" are regulated under the PSD program as a regulated NSR pollutant, but not under the nonattainment NSR program because nonattainment designations apply only with regard to criteria pollutants (pollutants for which NAAQS exist, e.g., PM_{10} and $PM_{2.5}$) and "particulate matter emissions" are not considered a criteria pollutant.

In 1993, under authorization contained in the CAA Amendments of 1990, EPA adopted increments for PM that were expressed in terms of ambient concentrations of PM_{10}, and substituted those increments for the original statutory increments for PM based on the TSP indicator. See 58 FR 31622, June 3, 1993. As a result, both the NAAQS for PM and the PSD increments for PM were henceforth measured by the PM_{10} indicator and, once states revised their SIPs to incorporate the new PM_{10} NAAQS and PM_{10} increments, the TSP indicator was no longer considered a regulated indicator of particles. However, because the NSPS for PM commonly measured performance standard compliance based on emissions of PM using the indicator that was roughly associated with the original ambient TSP indicator, the EPA stated in the preamble to the 1993 final rule promulgating new PSD increments based on PM_{10} that the agency would continue to regulate "particulate matter emissions" (25 tpy significant emissions rate) separately from "PM_{10} emissions" (15 tpy significant emissions rate) for purposes of PSD applicability determinations. Id at 31629.

Finally, in a final rule issued on May 16, 2008, titled, "Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)" (73 FR 28321), the EPA identified the major source threshold and significant emissions rate for $PM_{2.5}$ to reflect the indicator for the PM NAAQS that were issued in 1997. See 40 CFR 51.166(b)(23)(i) and 52.21(b)(23)(i). Hence, three separate indicators for emissions of PM are currently being regulated under the PSD program. Those indicators include PM_{10} and $PM_{2.5}$, both of which are indicators reflecting the way the NAAQS for PM are currently measured, and "particulate matter emissions," which is a term that signifies the indicator of PM that is measured under various NSPS for PM (40 CFR part 60).[8] All three of the indicators for PM are considered separately as regulated NSR pollutants subject to review under the PSD program, which means that proposed new and modified sources must treat each indicator

[8] In addition to the NSPS for PM, it is noted that states regulated "particulate matter emissions" for many years in their SIPs for PM, and the same indicator has been used as a surrogate for determining compliance with certain standards contained in 40 CFR part 63, regarding National Emission Standards for Hazardous Air Pollutants.

of PM as a separate pollutant for applicability determinations, and must then apply the PSD requirements, as appropriate, independently for each indicator of PM.

The 2008 final rule also added a provision to the definition "regulated NSR pollutant" in the PSD regulations and the Emission Offset Interpretative Ruling that requires the inclusion of the condensable fraction of PM for all three indicators of PM. Accordingly, the determination of the potential emissions (for permit applicability determinations), and the setting of emissions limitations and in-stack pollutant measurements (for source compliance purposes) would involve the inclusion of the condensable fraction of PM for each of the three PM indicators.

For reasons to be explained, this proposed rulemaking would remove "particulate matter emissions" from that provision defining "regulated NSR pollutant" in the aforementioned regulations, so that the relevant provision would require the inclusion of the condensable fraction of PM only with regard to emissions of PM_{10} and $PM_{2.5}$.

IV. Why is EPA proposing to change the definition "Regulated NSR pollutant" with regard to PM?

When we proposed to amend the PSD rules to address new requirements for $PM_{2.5}$ in 2005, we proposed to revise the definition "regulated NSR pollutant" to add $PM_{2.5}$ as a regulated criteria pollutant and to require that, for purposes of determining PSD applicability and setting emissions limitations for a particular proposed source or modification, emissions of PM_{10} and $PM_{2.5}$ included the condensable portion of particulate matter that could be emitted by the source or modification. Specifically, the proposed regulatory text provided that "Particulate matter (PM_{10} and $PM_{2.5}$) emissions include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures." See, e.g., 70 FR 65984 at 66067. In that text, we had not intended to include the PM indicator referred to as "particulate matter emissions"; instead, we intended the proposed text as a "shorthand" terminology encompassing both "PM_{10} emissions" and "$PM_{2.5}$ emissions." Moreover, we did not receive any

comments suggesting that the "PM emissions" indicator should be included in the provision requiring the inclusion of condensable PM. Nevertheless, in the final stages of preparing the 2008 final rule, the proposed text "Particulate matter (PM_{10} and $PM_{2.5}$) emissions," was revised to read "Particulate matter (PM) emissions, PM_{10} emissions and $PM_{2.5}$ emissions." Thus, the inadvertent editorial change made in the final rule added "Particulate matter (PM) emissions" as a third indicator for PM to the sentence for which the PSD regulations would require that condensable PM be included.

The preamble discussion in both the NPRM and the final rulemaking, designed to describe the new provision under the definition "regulated NSR pollutant," supports the position that our objective was to ensure that the condensable PM fraction was included in measurements of emissions of PM_{10} and $PM_{2.5}$. For example, the preamble to the NPRM stated the following: "The EPA has issued guidance clarifying that PM_{10} includes condensable particles and that, where condensable particles are expected to be significant, States should use methods that measure condensible emissions." 70 FR 65984 at 66039 (citing a March 31, 1994, EPA memo to the Iowa Department of Natural Resources). With regard to $PM_{2.5}$, we stated "[c]ondensible emissions are essentially fine particles, and thus are a larger fraction of $PM_{2.5}$ emissions than of TSP or PM_{10} emissions." Ibid. In the 2008 final rule, we clearly stated in the preamble that "EPA will require that all NSR applicability determinations for $PM_{2.5}$ and PM_{10} address condensable emissions as applicable…." 73 FR 28321 at 28335.

We also note that the 2008 final rule added the term "particulate matter (PM) emissions" to the definition "regulated NSR pollutant" at 40 CFR part 51 Appendix S (the EPA's "Emission Offset Interpretative Ruling"). This was clearly a mistake because that rule pertains to new source review in nonattainment areas (and to sources locating outside nonattainment areas that impact air quality in a nonattainment area). That being the case, Appendix S is not intended to address noncriteria pollutants, since nonattainment areas apply only to criteria pollutants. To further illustrate this point, the definition "regulated NSR pollutant" under the nonattainment area NSR requirements at 40 CFR 51.165 does not

include the term "particulate matter emissions." We have already explained that "particulate matter emissions" refers to the noncriteria indicator for PM subject to regulation under various NSPS. Accordingly, EPA is also proposing to revise the definition "regulated NSR pollutant" under Appendix S to remove the term "particulate matter emissions." See proposed 40 CFR part 51 Appendix S, Section III.A.31(ii).

It is important to note that the proposed change would not totally exempt the inclusion of the condensable PM fraction as part of "particulate matter emissions." The proposed revision accounts for the fact that, in some cases, the condensable PM fraction should be counted. The first case is where the applicable NSPS requires that the condensable PM fraction be included in the determination of compliance with the performance standard for PM.[9] The second case is where the applicable SIP already requires that the condensable PM fraction be included in the measurement of PM. Finally, in the case of any source emitting a pollutant that is regulated under section 111 of the Act, but is not itself subject to an NSPS, the reviewing authority may determine the applicable test method to be used to determine that source's compliance.

Thus, we are also proposing to clarify the text contained in the definition "regulated NSR pollutant" to indicate that for pollutants regulated under section 111 of the Act, which includes "particulate matter emissions," the applicability of the PSD requirements to that pollutant should be determined in a manner consistent with the test method prescribed for that particular NSPS or applicable SIP. See proposed 40 CFR 51.166(b)(49)(ii) and 52.21(b)(50)(ii). In cases where the proposed source or modification of PM is not regulated by any NSPS, but is nevertheless required to consider its potential to emit that pollutant, we intend to require under the federal PSD requirements at 40 CFR 52.21 that the

[9] In developing the NSPS for Wool Fiberglass Insulation Manufacturing facilities (Subpart PPP), the EPA determined that the control device could effectively reduce both the solid particles and the condensable PM, and promulgated the PM standard based on the measurement of both filterable solid particles and condensable PM. In addition, the agency established a variant of Method 5, referred to as Method 5e, to measure the filterable PM and the total organic carbon portion of the impinger catch. See 50 FR 7694, February 25, 1985.

applicable measurement will be determined by the Administrator. In the case of "particulate matter emissions," we generally intend to rely on the common practice of the NSPS to require that the applicable measure should be the filterable PM only, based on a compliance test method appropriate for such source, e.g., Method 5. Under the PSD regulations at 40 CFR 51.166, we propose that states, as the reviewing authority, may establish their own policy for applying the PSD requirements for "particulate matter emissions" to sources for which the NSPS does not apply.

The primary objective of our decision to propose this revision is to ensure to the extent practicable that we are not unnecessarily imposing a new requirement on state/local agencies and the regulated community that has little if any effect on preventing significant air quality deterioration or on efforts to attain the primary and secondary PM NAAQS. That is, we do not intend to require the inclusion of condensable PM in measurements of "particulate matter emissions" where that has not been a common practice in state and local control agencies and there are no ambient standards against which "particulate matter emissions" are to be compared. Proposed new or modified stationary sources of PM typically will be subjected to the PSD requirements on the basis of their potential to emit PM_{10} or $PM_{2.5}$ emissions and will be required to install controls for their emissions of PM_{10} and/or $PM_{2.5}$, both of which must consider the condensable fraction. We also recognize that in some cases, some states have chosen to regulate the condensable PM when determining the amount of a source's "particulate matter emissions." As already explained, the proposed revision would allow states to continue that practice by providing the necessary discretion to the reviewing authority, but we do not intend to impose such a new PSD requirement where it is not otherwise being practiced by the states already.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58

FR 51735, October 4, 1993), and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. Burden is defined at 5 CFR 1320.3(b). This proposal only removes the requirement to include condensable PM when quantifying "PM emissions" from proposed new major stationary sources and major modifications subject to the PSD program. The proposed change would eliminate a requirement that was not intended.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, "small entity" is defined as: (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, which proposes only to remove an unintended requirement to include condensable PM when quantifying "particulate matter emissions" from proposed new major stationary sources and major modifications, I certify that this action will not have a significant economic impact on a substantial number of small entities. This

proposed rule will not impose any requirements on small entities because small entities are not subject to the requirements of this rule.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This proposed action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local, or tribal governments or the private sector. The action would not impose any enforceable duty on any state, local or tribal governments or the private sector. This action proposes only to remove an unintended requirement to include condensable PM when quantifying "particulate matter emissions" from proposed new major stationary sources and major modifications. Thus, this action is not subject to the requirements of sections 202 or 205 of UMRA.

This proposed rule is also not subject to the requirements of section 203 of UMRA because it does not propose any regulatory requirements that might significantly or uniquely affect small governments. This action proposes only to remove an unintended requirement to include condensable PM when quantifying "particulate matter emissions" from proposed new major stationary sources and major modifications.

E. Executive Order 13132 - Federalism

This proposed rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The proposed rule proposes only to remove the unintended requirement to include condensable PM when quantifying "particulate matter emissions" from proposed new major stationary sources and major modification. The requirement was inadvertently included in the 2008 final

rule for Implementation of the $PM_{2.5}$ NSR Program. Thus, Executive Order 13132 does not apply to this rule. Nevertheless, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA plans to specifically solicit comment on the proposed rule from state and local officials.

F. Executive Order 13175 - Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The proposed rule proposes only to remove the requirement to include condensable PM when quantifying "PM emissions" from proposed new major stationary sources and major modification. The requirement was inadvertently included in the 2008 final rule for Implementation of the $PM_{2.5}$ NSR Program.

The Act provides for states to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Air Rule (TAR) under the Act gives tribes the opportunity to develop and implement Act programs to attain and maintain the $PM_{2.5}$ NAAQS, but leaves to the discretion of the tribes the decision of whether to develop these programs and which programs, or appropriate elements of a program, they will adopt. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045 - Protection of Children from Environmental Health and Safety Risks

This proposed action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action to eliminate an unintended requirement present a disproportionate risk to children. The removal of this requirement would not affect one of the basic requirements of the PSD program that new and modified major sources must demonstrate that any new emissions do not cause or contribute to air quality in violation of the NAAQS.

H. Executive Order 13211 - Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this proposed rule to remove an unintended requirement will not have adverse human health or environmental effects on minority or low-income populations because it does not appreciably affect the level of protection provided to human health or the environment.

VI. Statutory Authority

The statutory authority for this proposed action is provided by sections 101, 160, 163, 165, 166, 301, and 307(d) of the Act as amended (42 U.S.C. 7401, 7470, 7473, 7475, 7476, 7601, and 7607(d)).

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations.

40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Intergovernmental relations.

_March 12, 2012_____
Dated:

_____
Lisa P. Jackson,
Administrator.

For the reasons stated in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 51 - [AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401 - 7671q.

Subpart I - [Amended]

2. Section 51.166 is amended by revising paragraphs (b)(49)(i) and (ii) and removing (b)(vi) to read as follows:

§51.166 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(49) * * *

(i) Any pollutant for which a national ambient air quality standard has been promulgated;

(a) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included;

(b) Any pollutant identified under this paragraph (b)(49)(i)(b) as a constituent or precursor to such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(2) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(3) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(4) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Act, as required to be measured by the applicable performance standard for that pollutant. For sources not currently regulated by an applicable NSPS, measurement of such pollutant shall be determined by the reviewing authority;

* * * * *

3. Appendix S to Part 51 is amended revising paragraph II.A.31(ii) and by removing paragraphs II.A.31(iii) and (iv) to read as follows:

and

Appendix S to Part 51—Emission Offset Interpretative Ruling

* * * * *

II. * * *

A. * * *

31. * * *

(i) * * *

(ii) Any pollutant for which a national ambient air quality standard has been promulgated;

(1) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1, 2011, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in permits issued under this ruling. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particulate matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particulate matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particulate matter to be included.

(2) Any pollutant that is identified under this paragraph II.A.31(ii)(2) as a constituent or precursor of a general pollutant listed under paragraph II.A.31(i) or (ii) of this Ruling, provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(b) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

* * * * *

PART 52 – [Amended]

4. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart A - [Amended]

5. Section 52.21 is amended by revising paragraphs (b)(50)(i) and (ii) and removing paragraph (b)(50)(vi) to read as follows:

and

§52.21 Prevention of significant deterioration of air quality.

* * * * *

(b) * * *

(50) * * *

(i) Any pollutant for which a national ambient air quality standard has been promulgated;

(a) $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity, which condense to form particulate matter at ambient temperatures. On or after January 1,, such condensable particulate matter shall be accounted for in applicability determinations and in establishing emissions limitations for $PM_{2.5}$ and PM_{10} in PSD permits. Compliance with emissions limitations for $PM_{2.5}$ and PM_{10} issued prior to this date shall not be based on condensable particular matter unless required by the terms and conditions of the permit or the applicable implementation plan. Applicability determinations made prior to this date without accounting for condensable particular matter shall not be considered in violation of this section unless the applicable implementation plan required condensable particular matter to be included.

(b) Any pollutant identified under this paragraph (b)(50)(i)(b) as a constituent or precursor for such pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(1) Volatile organic compounds and nitrogen oxides are precursors to ozone in all attainment and unclassifiable areas.

(2) Sulfur dioxide is a precursor to $PM_{2.5}$ in all attainment and unclassifiable areas.

(3) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all attainment and unclassifiable areas, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(4) Volatile organic compounds are presumed not to be precursors to $PM_{2.5}$ in any attainment or unclassifiable area, unless the State demonstrates to the Administrator's satisfaction or EPA demonstrates that emissions of volatile organic compounds from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations.

(ii) Any pollutant that is subject to any standard promulgated under section 111 of the Act, as required to be measured by the applicable performance standard for that pollutant. For sources not currently regulated by an applicable NSPS, measurement of such pollutant shall be determined by the Administrator;

* * * * *

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